Supreme Court, U.S.
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No.

Supreme Court of the United States

John C. Bolliger,

Petitioner,

v.

Jeriann Kane,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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Question Presented For Review

Under the Washington State long-arm statute (RCW 4.28.185) and the Due Process clause of the Fourteenth Amendment to the United States Constitution, does the Washington trial court have personal jurisdiction over a California resident ("KANE") – to adjudicate a Washington resident's ("BOLLIGER'S") breach of contract action against KANE – where (1) the parties' pre-contract negotiations, contract-formation activities, and post-formation course of conduct were effected by the exchange of forms (including a promissory note, a deed of trust, a power of attorney document, and other forms), faxes, letters, mailings, and (approximately 20) telephone calls and (2) all contractual performances occurred in Washington,

KANE intended BOLLIGER'S contract performances to be for the benefit of a Washington resident (KANE'S brother), all files are located in Washington, and all non-party witnesses (including KANE'S brother) are located in Washington?

Parties To This Proceeding

The names of all parties to this proceeding appear on the front cover.

Table Of Contents

Petition:

A. A Split Exists In The Circuits 1

B. KANE'S Contacts in Washington Were Numerous And Purposeful 10

C. BOLLIGER'S Lawsuit Against KANE Arose From, And Is Connected With, The Transaction KANE Consummated With BOLLIGER In Washington To Provide Criminal Defense Representation For Jay Kane 13

D. The Assumption Of Jurisdiction By The Trial Court Does Not Offend Traditional Notions Of Fair Play And Substantial Justice, Consideration Being Given To The Quality, Nature, And Extent Of KANE'S Activities In Washington, The Relative Conveniences Of The Parties, The Benefits And Protections Of The Laws Of Washington Afforded The Respective Parties, And The Basis Equities Of The Situation 14

1. The Quality, Nature, And Extent Of KANE'S Activities In Washington 15

2. The Relative Conveniences Of The Parties 18

3. The Benefits And Protections Of The Laws Of Washington Afforded To KANE 19

4. The Basic Equities Of The Situation 23

Appendix:

Order From Which Review Is Sought (And Underlying Relevant Orders) 30-57

Excerpt From The Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 766-68, 783 P.2d 78 (1989) Decision 58-62

Excerpt From The Kysar v. Lambert, 76 Wn.App. 470, 487-90, 887 P.2d 431 (1995), rev. den. by 126 Wn.2d 1019, 894 P.2d 564 (1995) Decision 63-66

Excerpt From p. 11 Of BOLLIGER'S Motion For Discretionary Review Filed With The Washington Court Of Appeals 67

Table Of Authorities

Federal Decisions:

Cole v. Mileti,
133 F.3d 433 (6th Cir. 1998), cert. den. by 525 U.S. 810, 119 S.Ct. 42, 142 L.Ed.2d 32 (1998) . 7, 9

CompuServe, Inc. v. Patterson,
89 F.3d 1257 (6th Cir. 1996) 8

Health Communications, Inc. v. Mariner Corp.,
860 F.2d 460 (D.C. Cir. 1988) 8

Washington Decisions:

Byron Nelson Co. v. Orchard Management Corp.,
95 Wn.App. 462, 975 P.2d 555 (1999) 16

Crown Controls, Inc. v. Jim Smiley *et al.*,
47 Wn.App. 832, 737 P.2d 709 (1987) 16

Huebner v. Sales Promotion, Inc.,
38 Wn.App. 66, 684 P.2d 752 (1984) 16

Kysar v. Lambert,
76 Wn.App. 470, 887 P.2d 431 (1995), rev. den. by 126 Wn.2d 1019, 894 P.2d 564) (1995) . . . 6, 15

Precision Laboratory Plastics, Inc. v. Micro Test, Inc.,
96 Wn.App. 721, 981 P.2d 454 (1999) 17

Raymond v. Robinson,
104 Wn.App. 627, 15 P.3d 697 (2001) 16

Shute v. Carnival Cruise Lines,
113 Wn.2d 763, 783 P.2d 78 (1989) 6, 10

Toulouse v. Swanson,
73 Wn.2d 331, 438 p.2d 578 (1968) 5

Washington Statutes:

RCW 4.28.185 . . . . . 4, 6, 7

RCW 4.28.185(1)(a) 5

Washington Treatises:

14 Wash. Prac., Civil Procedure § 4.7 17

Bases For Jurisdiction

The order of the Supreme Court of Washington which BOLLIGER seeks to have reviewed was entered on November 3, 2010. (See Appendix, pp. 30-31 hereto.) The question presented is one of **personal jurisdiction** under the Washington State long-arm statute (RCW 4.28.185) and the Due Process clause of the Fourteenth Amendment to the United States Constitution, Section 1.

Statement Of The Case

The nature of KANE'S conduct in Washington was to establish an ongoing relationship with BOLLIGER to provide start-to-finish criminal defense representation of KANE'S adult brother, Jay, with respect to the four (4) felony charges which had been brought against him for furnishing controlled substances to minors. BOLLIGER fully performed the criminal defense services KANE induced BOLLIGER to perform, however, KANE ultimately failed to pay anything to BOLLIGER therefor.

When BOLLIGER sued KANE for breach of contract in state District Court, KANE moved to dismiss on personal jurisdiction grounds. The District Court twice ruled in BOLLIGER'S favor: it

denied KANE'S motion to dismiss and it denied KANE'S motion for reconsideration.

KANE appealed to the Superior Court, which reversed the District Court's denial of her motion to dismiss. BOLLIGER sought discretionary review from the Washington Court of Appeals, which was denied. BOLLIGER sought discretionary review from the Supreme Court of Washington, which also was denied. BOLLIGER'S instant *Petition for Writ of Certiorari* has followed.

At the various stages of appellate review, the appellate courts each ruled against BOLLIGER, yet they each did so for different (and erroneous) reasons – **without ever addressing the question here presented**. For example, the Superior Court

reversed BOLLIGER'S two wins at the District Court level on grounds that (1) KANE is a California resident who never appeared in Washington and (2) KANE'S hiring of BOLLIGER "does not constitute a business transaction under RCW 4.28.185(1)(a)." (The Superior Court's first point is negated by abundant Washington decisional law, discuss infra, which upholds personal jurisdiction over nonresident defendants which never have appeared in Washington. Its second point is squarely wrong pursuant to the decision in Toulouse v. Swanson, infra.) Next, the Court of Appeals ruled against BOLLIGER on the ground that "the mere execution of a contract with a state resident is not enough to fulfill the purposeful act requirement for long arm jurisdiction." (The Court of Appeals' point is wrong because KANE'S numerous, purposeful acts with

BOLLIGER in Washington obviously consist of much, much more than "the mere execution of a contract.") Finally, the Washington Supreme Court ruled against BOLLIGER, stating numerous facts which it wrongly assumed were existent in this case – each of which is best explained by the following excerpt from BOLLIGER'S *Motion to Modify Commissioner's Ruling* subsequently filed with that court:

> . . . BOLLIGER next sets forth Commissioner Goff's several stated bases in quotes (from pp. 3-4 of his ruling), each followed by BOLLIGER'S respectful assertion of what actually is correct in brackets.
>
> a. "[BOLLIGER] had no attorney-client relationship with [KANE]." [This seems to suggest no contract could have been formed between BOLLIGER and KANE without them having an attorney-client relationship. Such a suggestion would not be legally supportable.]

b. "There is no evidence [KANE] ever visited Washington." [This fact, although true, is rendered irrelevant given the decisional law discussed above regarding out-of-state defendants who never visited Washington.]

c. "Here, the record indicates, at best, a rushed exchange of faxes, accompanied by a disputed number of telephone calls . . . ." [There was no "rushed exchange of faxes" in this case; the express factual findings set forth above indicate the BOLLIGER-KANE pre-contract-formation negotiations, contract-formation activities, and post-contract-formation course of conduct occurred over a 3-month period. Also, there was no "disputed number of telephone calls" in this case. When BOLLIGER sent KANE'S attorney his proposed findings of fact for entry with the District Court, KANE'S attorney took no issue with BOLLIGER'S proposed findings, except she wanted the final sentence – "At all relevant times Kane resided in California, and made no trips to Washington State" – added thereto, a request with which BOLLIGER obliged. Attached hereto as Exhibit A is a copy of KANE'S attorney's July 15, 2008 letter to BOLLIGER which establishes these facts.]

d. "The Court of Appeals Commissioner McCown correctly concluded that mere execution of a contract is not enough to satisfy the purposeful act requirement." [The District

Court's express factual findings set forth above, not appealed in any way by KANE, clearly demonstrate KANE engaged in numerous more contacts with Washington State than merely signing a single contract document.]

e. "[KANE] plausibly claims she was unaware of the legal ramifications of the transaction." [From BOLLIGER'S observations gleaned from some twenty (20) telephone calls with KANE, she is an adult woman who was 40-ish in age, employed, and owned her own home. The Promissory Note BOLLIGER sent her to review and sign is concise and clearly worded. BOLLIGER suggests the only thing plausible from these facts is KANE was fully aware of the legal ramifications of what she signed. No facts ever have been introduced in this case to suggest KANE suffered from some medical or psychological problem which might somehow hinder her ability to understandably enter into a contract.]

f. "[KANE] must avail herself of the benefits and protections of this state's laws, and she must derive a benefit. . . . In this connection, [KANE] received neither legal services from [BOLLIGER] nor any measurable benefit from the services he provided her brother." [KANE most certainly did derive several benefits from BOLLIGER'S successful (given the facts of the case) criminal defense services rendered to

KANE'S brother. KANE was frantic when she first called BOLLIGER to induce him to represent her brother. When the case was over, KANE was ecstatic with the outcome. Further, it is not true to say KANE "received [no] legal services from" BOLLIGER; it was KANE who initiated telephone contact to induce BOLLIGER to provide legal services for her brother; it was at KANE'S own instigation (and for her direct benefit) that BOLLIGER prepared the power-of-attorney document (wherein she is named the attorney-in-fact), went to the jail to discuss it with KANES brother, received his signature thereon, and mailed it to KANE; it was KANE who requested BOLLIGER send her documentation clarifying what her brother's legal options were if he pleaded guilty versus got convicted after trial (which documentation BOLLIGER then provided her). These were legal services directly requested by, and/or for the direct benefit of, KANE. A review of the District Court's express findings of fact (pp. 2-3 above) reveals KANE engaged in numerous affirmative acts in this saga, which constitute her availing herself of the benefits and protections of the state's laws.]

g. "[BOLLIGER] does not dispute [KANE'S] claim that he did not urge her to seek independent legal advice before encumbering her home and signing a promissory note in her favor." [KANE'S home was not "encumbered,"

because after KANE sent the deed of trust (of her own choosing) to BOLLIGER, he realized her home is a manufactured home on Native American land not owned by her – i.e., the deed of trust is ineffective because her home is not part of the realty (and, in any event, she doesn't own the realty). Also, after reviewing the *Commissioner's Ruling*, BOLLIGER searched the RPC's for a requirement for BOLLIGER to have advised KANE (a non-client of BOLLIGER'S) to seek "independent legal advice" – and could find none. KANE did not execute the Promissory Note and deed of trust (or any other document) in BOLLIGER'S office where she later could claim she was rushed by BOLLIGER into signing them; rather, she signed them all in California. BOLLIGER never dissuaded KANE from seeking independent legal advice as to those documents. If KANE had wanted to do so, she was free to do so.]

h. "There is no evidence that [BOLLIGER] discussed with [KANE] whether her brother would be eligible for an attorney at public expense if he had no money to pay him." [KANE herself never has made any such claim. This is because her brother already had a public defender before he and she ever started talking to BOLLIGER. They both were unhappy with the job her brother's public defender was doing. That is why they approached BOLLIGER in the first place.

Attached hereto as Exhibit B is a copy of the Washington Courts' printout for KANE'S brother's criminal case, which shows (on its p. 3) that, effective, June 29, 2007, the public defender withdrew from, and BOLLIGER substituted in for, KANE'S brother. This all occurred after KANE successfully induced BOLLIGER to represent her brother. It was only later that BOLLIGER received her brother's file from the public defender – and BOLLIGER learned for the first time her brother had handwritten a confession to the police.]

i. "[I]t is debatable whether [KANE] conducted any business in this state, let alone purposefully avail herself of the benefits and protections of this state." [If it is "debatable," shouldn't the Court accept review of this case to address the competing merits of the debate?]

The point of the foregoing is that the appellate courts in Washington did not enunciate a single, consistent (or correct) basis for denying BOLLIGER'S requested relief that the District Court is authorized under the facts of this case to exercise personal jurisdiction

over KANE. **Most importantly, none of the appellate rulings addressed the question here presented; even though BOLLIGER presented that question to each of the appellate courts, they each ignored addressing it.**

Starting at the District Court level, BOLLIGER relied upon the Kysar v. Lambert, infra and the Toulouse v. Swanson, infra decisions. About these decisions, the District Court set forth the following conclusions of law in its order denying KANE'S motion for reconsideration (with emphases added):

> 1. The Kysar v. Lambert, 76 Wn.App. 470, 887 P.2d 431 (1995) decision holds that there exist sufficient, purposeful minimum contacts with the state of Washington where the nonresident defendant **exchanged forms, letters, and phone calls** with the Washington State plaintiff – and that it doesn't matter which party initiated the communications.

2. The Toulouse v. Swanson, 73 Wn.2d 331, 438 P.2d 578 (1968) decision holds that – **within the meaning of the Washington State long-arm statute, RCW 4.28.185(1)(a) – the nonresident defendant has engaged in the "transaction of . . . business" within the state of Washington when she hires the plaintiff Washington attorney to perform legal services and the instant case is an action by the plaintiff attorney for compensation for the professional (legal) services he rendered as a result of that hiring.**

The Kysar v. Lambert decision expressly concludes the Washington long-arm statute, "RCW 4.28.185 'extends jurisdiction to the limit of federal due process.'" Id. at 487. (See Appendix, pp. 37-40 hereto, for its discussion leading to that conclusion.) The Toulouse v. Swanson decision expressly addresses how the decisions it references "discuss, at great length, the rationale of the theory set forth in International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057

(1945), and related cases." BOLLIGER reiterated the Kysar v. Lambert and Toulouse v. Swanson holdings in his Superior Court briefings, as well. BOLLIGER also identified the above question presented under the U.S. Constitution on p. 11 of his motion for discretionary review filed with the Washington Court of Appeals. (See Appendix, p. 41 hereto.) BOLLIGER also pursued this argument in his briefing in the Supreme Court of Washington by referencing the record below that stage.

Reasons Relied Upon For Allowance Of The Writ

The Sixth Circuit decisions addressed in the petition (and other Sixth Circuit decisions) are not followed by other Circuits. (A clear split of authority between the Sixth and D.C. Circuits, e.g., is addressed in the petition.) The order of the Supreme Court of Washington for which review here is sought is not in accord with the Sixth Circuit or with other Washington decisions (i.e., Washington courts have ruled inconsistently on the question presented). These conflicts make it clear the important question of federal law presented has not been, but should be, settled by this Court.

A. A Split Exists In The Circuits

Sixth Circuit law – as well as many Washington decisions – would allow the exercise of personal jurisdiction over KANE given the facts of this case. Other Circuit law is not in accord. The Supreme Court of Washington's denial of BOLLIGER'S petition for discretionary review is in conflict with the Sixth Circuit law and other Washington decisions.

The District Court's express findings of fact (which were agreed to by both BOLLIGER and KANE when entered – and KANE therefore never has challenged them) are as follows:

> 3. In this case, the facts applicable to

KANE'S motion for reconsideration are as follows. KANE contacted BOLLIGER by phone to secure legal representation by BOLLIGER for KANE'S brother, Jay Kane. BOLLIGER informed KANE that Jay Kane's felony defense would cost a flat fee of $20,000.00, plus costs incurred, plus $2,000.00 per day for trial in the event Jay Kane elected to go to trial. KANE represented that (1) she will, indeed, pay all of those fees and costs on behalf of her brother, Jay Kane, (2) she owns her own home, (3) she is employed, and (4) Jay Kane has approximately $30,000.00 in "tribal" money coming to him soon. KANE elaborated that she would try to get a loan on her home while she is waiting for Jay Kane's "tribal" money. If the loan came in first, she would pay BOLLIGER with that money, and use Jay Kane's "tribal" money to pay off the loan. On the other hand, if Jay Kane's "tribal" money came in first, she would use that money to pay BOLLIGER. On 6/26/07, BOLLIGER faxed a Promissory Note to KANE. That same day, KANE executed the Promissory Note and faxed it back to BOLLIGER. Thereafter, KANE mailed the original of the Promissory Note to BOLLIGER. BOLLIGER had also informed KANE that BOLLIGER would need a deed of trust against KANE'S house, securing KANE'S payment obligation set forth in the Promissory Note. KANE got a form of her own, filled it out on 6/26/07, faxed it to BOLLIGER that same day, and thereafter mailed BOLLIGER the original. On 6/27/07, after receiving from KANE via fax the two documents just referred to, BOLLIGER met again

with Jay Kane and they signed the attorneys' fee agreement for Jay Kane's legal defense. On 6/29/07, KANE faxed another form to BOLLIGER, titled *Land Status and Jurisdiction Form, Section 184 Indian Housing Loan Guarantee Program, HUD, Office of Native American Programs.* KANE represented to BOLLIGER on another telephone call that this form was indicative of the loan she was seeking on her home in order to pay Jay Kane's legal defense fees and costs. In a subsequent telephone call, KANE told BOLLIGER she needed BOLLIGER to draft a power of attorney document for Jay Kane to sign – naming KANE as his attorney-in-fact – so that, when Jay Kane's "tribal" money came in, she could withdraw the funds on Jay Kane's behalf and pay BOLLIGER. On 7/10/07, BOLLIGER therefore drafted a *General Durable Power of Attorney for Financial Decision Making of Jay Kane,* took the document to the jail to discuss it with Jay Kane, and obtained Jay Kane's signature thereon after Jay Kane indicated he was agreeable with that approach. BOLLIGER then mailed the original of the document to KANE. In a subsequent telephone call, KANE requested documentation indicating what Jay Kane's options were if he pleaded guilty versus got convicted after a trial. BOLLIGER faxed such materials to KANE on 9/22/07. BOLLIGER estimates that he and KANE spoke on the telephone perhaps 20 times in all – and that he, BOLLIGER, initiated approximately 60% (12) of the calls and KANE initiated the other 40% (8); this estimate has not been disputed by

KANE. At all relevant times KANE resided in California, and made no trips to Washington State.

Additional undisputed facts of this case are that all contractual performances occurred in Washington, KANE intended BOLLIGER'S contract performances to be for the benefit of a Washington resident (KANE'S brother, Jay), all files are located in Washington, and all non-party witnesses (including Jay Kane) are located in Washington.

Regarding these facts, Washington's long-arm statute – RCW 4.28.185 – sets forth in pertinent part as follows:

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section

> enumerated, thereby submits said person, and, if an individual, his personal representation, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
>
> > (a) The transaction of any business within this state;
> > . . . .

As mentioned above in the Statement of The Case, the decision in Toulouse v. Swanson, 73 Wn.2d 331, 438 P.2d 578 (1968), holds that – within the meaning of the Washington State long-arm statute, RCW 4.28.185(1)(a) – the nonresident defendant has engaged in the "transaction of . . . business" within the state of Washington when she hires the plaintiff Washington attorney to perform legal services and the instant case is an action by the plaintiff attorney for compensation for the professional (legal) services he rendered as a result

of that hiring.

In Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 768, 783 P.2d 78 (1989), the Supreme Court of Washington concluded as follows with respect to the Washington long-arm statute, RCW 4.28.185 (with emphasis added):

> **Thus, when the federal courts regard the due process standard and the statutory standard under RCW 4.28.185 as a single inquiry, [fn. omitted] it is based upon a concept firmly rooted in our case law.**

(See Appendix, pp. 58-62 hereto, for the full discussion which culminated in that conclusion.)

In Kysar v. Lambert, 76 Wn.App. 470, 489-90, 887 P.2d 431 (1995) rev. denied by 126 Wn.2d 1019, 894

P.2d 564 (1995), the Washington Court of Appeals held that – under the Washington long-arm statute, RCW 4.28.185 – the "exchange of **forms, letters, and phone calls** between Washington and Massachusetts" formed a sufficient basis for the Washington court to exercise personal jurisdiction over the Massachusetts defendant. (See Appendix, pp. 63-66 hereto.)

Without mentioning them, the Sixth Circuit is in accord with the foregoing authorities. In Cole v. Mileti, 133 F.3d 433, 436 (6th Cir. 1998), cert. denied by 525 U.S. 810, 119 S.Ct. 42, 142 L.Ed.2d 32 (1998), e.g., the Sixth Circuit held as follows (with emphases added):

If, as here, a nonresident defendant **transacts**

business by negotiating and executing a contract via telephone calls and letters to an Ohio resident, then the defendant has purposefully availed himself of the forum by creating a continuing obligation in Ohio. [Citations omitted.] Furthermore, if the cause of action is for breach of that contract, as it is here, then the cause of action naturally arises from the defendant's activities in Ohio. [Citation omitted.] Finally, when we find that a defendant like Mileti purposefully availed himself of the forum and that the cause of action arose directly from that contract, we presume the specific assertion of personal jurisdiction was proper. [Citation omitted.] In light of this precedent, we have no doubt that the Magistrate's assertion of jurisdiction over Mileti was fundamentally fair and constitutional.[1]

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[1] However, the D.C. Circuit is not in accord with the Washington and Sixth Circuit decisions discussed above. See, e.g., Health Communications, Inc. v. Mariner Corp., 860 F.2d 460 (D.C. Cir. 1988), in which the court held that several telephone conversations and exchanged correspondence between the parties did not constitute sufficient minimum contacts for the court to exercise personal jurisdiction over defendant Mariner. Another Sixth Circuit decision – CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1264 (6th Cir. 1996), rehearing den. (1996) – addressed and declined to follow the D.C. Circuit's Health Communications decision on this issue. Thus, a clear split of authority exists on this issue between these two Circuits.

This Court tacitly approved the decision in Cole v. Mileti by denying certiorari.

State and federal courts typically engage in the following three-part test to determine whether the exercise of personal jurisdiction is appropriate pursuant to a state's long-arm statute:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
>
> (2) the cause of action must arise from, or be connected with, such act or transaction; and
>
> (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

See, e.g., Shute v. Carnival Cruise Lines, supra, at 767-68, 783 P.2d 78 (1989). (See Appendix, p. 60 hereto.) These factors are next addressed.

B. KANE'S Contacts In Washington Were Numerous And Purposeful

From the trial court's express findings of fact, infra, KANE'S purposeful minimum contacts with BOLLIGER in Washington can be summed up as follows:

- KANE initiated communications with BOLLIGER;
- KANE telephoned BOLLIGER to inform him (1) she will pay the $20,000 attorneys' fee BOLLIGER was charging to represent her brother, Jay, in his defense of 4 felony charges, (2) she owns her own home, (3) she is employed, (4) Jay Kane has approximately $30,000.00 in "tribal" money coming to him soon, and (5) she will try to get a loan on her home while she is waiting for Jay

Kane's "tribal" money to come in; if the loan comes in first, she will pay BOLLIGER with that money, and use Jay Kane's "tribal" money to pay off the loan; on the other hand, if Jay Kane's "tribal" money comes in first, she will use that money to pay BOLLIGER;

- KANE executed a *Promissory Note*, got her signature thereon notarized, and faxed the *Promissory Note* to BOLLIGER;

- KANE thereafter mailed the original *Promissory Note* to BOLLIGER;

- KANE obtained her own *Deed of Trust* form (against her house, to secure her payment obligation under the *Promissory Note*), filled it out, executed it, got her signature thereon notarized, and faxed it to BOLLIGER;

- KANE thereafter mailed the original *Deed of Trust* to BOLLIGER;

- KANE faxed her *Land Status and Jurisdiction Form, Section 184 Indian Housing Loan Guarantee Program, HUD, Office of Native American Programs* document to BOLLIGER;

- KANE telephoned BOLLIGER and represented that the foregoing document was indicative of the loan she was seeking on her home to pay Jay Kane's legal defense fees and costs;

- KANE telephone BOLLIGER and requested that he draft a power of attorney document, have Jay Kane sign it, and send it back to her – so that, when Jay Kane's "tribal" money came in, she could withdraw the funds on Jay Kane's behalf to pay BOLLIGER;

- KANE telephoned BOLLIGER, requesting documentation indicating what Jay Kane's options were if he pleaded guilty versus if he got convicted after a trial; and

- in all, KANE placed approximately 8 telephone calls to BOLLIGER for the purpose of securing and monitoring BOLLIGER'S defense of Jay Kane with respect to the criminal charges brought against him.[2]

With these purposeful minimum contacts (which are numerous), KANE clearly acted to, and obviously did, consummate a transaction with BOLLIGER in Washington to provide criminal defense representation for her brother, Jay Kane.

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[2] BOLLIGER provided KANE everything she asked for.

C. BOLLIGER'S Lawsuit Against KANE Arose From, And Is Connected With, The Transaction KANE Consummated With BOLLIGER In Washington To Provide Criminal Defense Representation For Jay Kane

Here, in the transaction KANE consummated with BOLLIGER in Washington to provide criminal defense representation for Jay Kane, KANE promised to pay BOLLIGER therefor. After BOLLIGER'S representation of Jay Kane was successfully completed, KANE utterly refused to pay BOLLIGER anything. BOLLIGER'S underlying lawsuit against KANE is to recover the attorney's fee KANE owes BOLLIGER. Thus, BOLLIGER'S lawsuit against KANE obviously arose from, and is connected with, the transaction KANE consummated with BOLLIGER in Washington to provide criminal

defense representation for Jay Kane.

D. The Assumption Of Jurisdiction By The Trial Court Does Not Offend Traditional Notions Of Fair Play And Substantial Justice, Consideration Being Given To The Quality, Nature, And Extent Of KANE'S Activities In Washington, The Relative Conveniences Of The Parties, The Benefits And Protections Of The Laws Of Washington Afforded The Respective Parties, And The Basic Equities Of The Situation

As the discussion, below, of each of these factors reveals, the trial court's assumption of personal jurisdiction over KANE obviously does not offend traditional notions of fair play and substantial justice.

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1. The Quality, Nature, And Extent of KANE'S Activities In Washington

For this factor, it should not be interesting that the trial court's express findings of fact, infra, end with the sentence, "[at] all relevant times KANE resided in California, and made no trips to Washington State" – because it is precisely for such a situation the long-arm statutes of the states exist.

It is not a requirement in Washington, in order for its courts to exercise personal jurisdiction over a nonresident defendant, that the nonresident defendant has at some time personally appeared in Washington. See, e.g., Kysar v. Lambert, supra (no facts indicating the Massachusetts purchaser of Christmas trees from Washington had ever set foot

in Washington). See also, Crown Controls, Inc. v. Jim Smiley *et al.*, 47 Wn.App. 832, 737 P.2d 709 (1987) (no facts indicating Mr. Smiley, an Oregon resident, ever set foot in Washington); Raymond v. Robinson, 104 Wn.App. 627, 15 P.3d 697 (2001) (defendant Arizona corporation "does not have any offices or agents in Washington State"); Huebner v. Sales Promotion, Inc., 38 Wn.App. 66, 684 P.2d 752 (1984), review denied by 103 Wn.2d 1018 (1985), and certiorari denied by 474 U.S. 818, 106 S.Ct. 64, 88 L.Ed.2d 52 (1985) (personal jurisdiction need not be predicated on defendant's presence in Washington; jurisdiction may be asserted where defendant's Texas activities cause harm in Washington); Byron Nelson Co. v. Orchard Management Corp., 95 Wn.App. 462, 975 P.2d 555 (Div. 3 1999), review denied by 138 Wn.2d 1024, 989 P.2d 1136 (Virginia

seller's act of soliciting and engaging a Washington broker, without ever coming to Washington, is enough to establish minimum contacts, as required for the exercise of long-arm jurisdiction to satisfy due process, even if the ultimate customer is not expected to be a Washington resident); 14 Wash. Prac., Civil Procedure § 4.7 ("The court may acquire personal jurisdiction over the defendant even though the defendant is not physically present in the state. For example, the solicitation of business (or the negotiation of a contract) in Washington by **telephone or by mail** may be sufficient" (emphasis added)); and Precision Laboratory Plastics, Inc. v. Micro Test, Inc., 96 Wn.App. 721, 981 P.2d 454 (1999) (the Georgia defendant had no office in Washington and no employees of the Georgia defendant entered Washington in connection with

the formation of the parties' contract). Thus, KANE'S personal appearance in the state of Washington is not a requirement for the Washington courts to exercise personal jurisdiction over her.

The material "quality, nature, and extent" of KANE'S activities which justify the Washington trial court exercising personal jurisdiction over her are set forth in the the trial court's express factual findings, infra. They are abundant.

2. The Relative Conveniences Of The Parties

There are no facts or arguments which conceivably could support a contention that it would be more inconvenient for KANE to litigate in Washington than it would be for BOLLIGER to litigate in

California. Contrarily, KANE already has a Washington attorney onboard and already is actively litigating this case in Washington. Further, the case files all are located in Washington. Further still, all the non-party witnesses are located in Washington – (including KANE'S brother, and BOLLIGER'S former client, Jay Kane – who is incarcerated in Washington and is expected to be so incarcerated for a few more years). In this case, the balance of the inconveniences tips in favor of litigating in Washington.

3. **The Benefits And Protections Of The Laws Of Washington Afforded To KANE**

KANE hired BOLLIGER to provide criminal defense legal services for her brother, Jay, in

Washington. It should not be interesting that these legal services were to be rendered for Jay Kane's principal benefit, rather than for the principal benefit of KANE. KANE certainly benefitted from the legal services she hired BOLLIGER to perform for Jay Kane; KANE very much wanted her brother to get the best possible outcome which could be achieved for him.

From all of the communicating which occurred between KANE and BOLLIGER, KANE knew that (1) her brother was charged with 4 Class B felonies: delivering methamphetamine to 4 minors, (2) her brother had admitted in writing that he provided methamphetamine to the minors, (3) the standard sentencing range if her brother was convicted on all 4 counts was "68+ to 100 months," (4) BOLLIGER

worked the case up by, inter alia, interviewing all the minors at the prosecutor's office to get their testimony locked in, (5) BOLLIGER thereafter persuaded the prosecutor to drop 1 of the 4 counts against Jay Kane, (6) the standard sentencing range if Jay Kane pleaded guilty to the 3 other counts was only "51 to 68 months," and (7) BOLLIGER would be arguing for a Drug Offender Sentencing Alternative ("DOSA") for Jay Kane. KANE persistently was involved with wanting to know all of these details. KANE requested that BOLLIGER provide her documentation which indicates the foregoing. BOLLIGER did so. After being apprised of all the facts and law, Jay Kane decided to plead guilty to the 3 counts. Although the trial court ultimately rejected BOLLIGER'S plea for the DOSA sentencing alternative, BOLLIGER persuaded the court to

sentence KANE to the extreme bottom of the standard range for the 3 counts (i.e., for his offender score of 2): 51 months. When it all was over, given the facts of her brother's case, KANE was ecstatic with the outcome BOLLIGER achieved for her brother and thanked BOLLIGER profusely for his work on the case.

KANE also requested that BOLLIGER draft the *Promissory Note* she signed to manifest her promise to pay for the legal services she induced BOLLIGER to perform for Jay Kane. KANE also requested that BOLLIGER draft the document titled *General Durable Power of Attorney for Financial Decision Making of Jay Kane*, and procure her brother's signature on it at the jail, so she could have financial decision making authority over her brother's affairs.

BOLLIGER performed these legal services in Washington for KANE'S direct benefit, as requested.

It should be clear from the foregoing that KANE purposefully availed herself of the benefits and protections of the laws of the state of Washington.

4. The Basic Equities Of The Situation

Jay Kane was in jail and unemployed when KANE first contacted BOLLIGER. Jay Kane had no money. Although a public defender had been appointed for him, neither KANE, Jay Kane, nor any other members of their family liked the job the public defender had been doing for Jay Kane. BOLLIGER would not have undertaken the representation of Jay Kane in his defense against the 4 Class B felonies

case if KANE had not promised to pay for BOLLIGER'S services. Once hired by KANE, BOLLIGER performed an abundance of work on KANE'S brother's case. Given the facts of his case, no conceivably better outcome could have been obtained for Jay Kane. BOLLIGER fully performed precisely as KANE hired him to perform.

KANE hired BOLLIGER and promised to pay for his work. KANE closely monitored all BOLLIGER was doing for Jay Kane throughout the entire case, to ensure she was getting everything from BOLLIGER she had bargained for. When BOLLIGER'S work was successfully completed, KANE then decided not to pay BOLLIGER anything. KANE has utterly failed to perform pursuant to her agreement with BOLLIGER.

KANE purposefully availed herself of the laws of Washington to procure a Washington attorney to successfully defend her brother against charges brought against him in Washington – and to prepare legal documents in Washington for her own direct benefit. Now, she is attempting to construe Washington law to assist her with avoiding having to be accountable for paying BOLLIGER for rendering the very services she induced BOLLIGER to render for her. KANE would like the U.S. Supreme Court to require BOLLIGER to have to litigate his case against KANE in California – and pay KANE'S attorneys' fees related to this personal jurisdiction issue, which the Washington Court of Appeals awarded to her and the Supreme Court of Washington affirmed without comment (with its denial of BOLLIGER'S motion for discretionary

review). Based upon the foregoing, such an outcome clearly would be inequitable.

In the instant case – notwithstanding the aforementioned Sixth Circuit and Washington decisions – the Supreme Court of Washington denied BOLLIGER'S motion for discretionary review.

Of course, gone are the days when contract negotiations with another person somewhere across the nation could be accomplished only via personal visit, U.S. mail, or costly long-distant telephone calls. We now live in a world where diverse methods of contract negotiations with each other are very quick and easy to be had, e.g., via faxing, e-mailing, texting, cell phoning, placing orders over the

Internet, connecting with remote computers, videoconferencing, and etc.

Because it now is so very easy to enter into a contract with another who resides in a different state, the forum courts of our nation should be able to exercise personal jurisdiction over a nonresident contracting party – under facts similar to those in the aforementioned Sixth Circuit and Washington decisions (like the facts of this case are). Stated another way, the forum courts of our nation should not be prohibited from exercising personal jurisdiction over a nonresident who enters into a contract with a resident – merely because the parties' pre-contract negotiations, contract-formation activities, and post-formation course of conduct were effected by the exchange of forms,

faxes, letters, e-mails, and phone calls – particularly where, as here, all contractual performances occurred in the forum state, the nonresident intended the contract performances to be for the benefit of a forum-state resident (her own brother), all files are located in the forum state, and all non-party witnesses are located in the forum state.

However, the holdings referenced herein are not universal between the Circuits and the states – and, as this case demonstrates, although Washington itself has so held, it has done so without any consistency. Because of these conflicts, the question presented for review needs a settlement decision from this Court.

Based upon the foregoing, BOLLIGER respectfully requests that the Honorable Supreme Court of the United States grant his *Petition for Writ of Certiorari* and thereafter establish a consistent approach to this important question of federal law.

DATED this 28 day of March, 2011.

BOLLIGER LAW OFFICES

by: _____

John C. Bolliger, WSBA No. 26378

Attorney and pro se petitioner

Order From Which Review Is Sought

SUPREME COURT OF WASHINGTON

ORDER

No. 84623-5

C/A No. 28074-8-III

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

Department II of the Court, composed of Chief Justice Madsen and Justices Alexander, Chambers, Fairhurst and Stephens, considered this matter at its November 2, 2010 Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 3rd day of November, 2010.

For the Court

Madsen, C.J. /s/

CHIEF JUSTICE

SUPREME COURT OF WASHINGTON

No. 84623-5

RULING DENYING REVIEW AND AWARDING ATTORNEY FEES

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

Washington attorney John Bolliger agreed to represent Jay Kane in a Benton County controlled substances prosecution. But Mr. Kane apparently had no money. At Mr. Bolliger's urging, Mr. Kane's sister, Jeriann Kane, a resident of California, signed

a promissory note agreeing to pay Mr. Bolliger $20,000 to defend her brother, secured by a deed of trust on Ms. Kane's residence, a mobile home located on a California Indian reservation. Ms. Kane apparently believed the Indian tribe would pay her brother a sum of money sufficient to cover the $20,000. After Ms. Kane executed the deed of trust and promissory note, Mr. Bolliger and Mr. Kane executed a fee agreement in which Mr. Kane promised to pay Mr. Bolliger a flat fee of $20,000 if the matter was resolved short of trial, plus $2,000 per day if the matter proceeded to trial. The fee agreement further allowed Mr. Bolliger to withdraw if the deed of trust securing the $20,000 was defective. Ms. Kane was not a party to the fee agreement. And Mr. Bolliger had no attorney-client relationship with Ms. Kane.

Mr. Bolliger resolved Mr. Kane's case through a plea agreement. He then submitted an invoice to Ms. Kane for $20,000 plus various expenses. The anticipated tribal money never materialized. After Ms. Kane failed to pay Mr. Bolliger as requested, he filed an action against her in Benton County District Court, asserting various causes of action, including breach of contract and unjust enrichment. The district court denied Ms. Kane's motion to dismiss for lack of personal jurisdiction. But the superior court reversed on Ms. Kane's RALJ appeal and issued an order remanding the case to the district court for dismissal.

Mr. Bolliger sought discretionary review in Division Three of the Court of Appeals. RAP 2.3(d). Court of Appeals Commissioner McCown denied review and awarded Ms. Kane attorney fees under

RCW 4.28.185(5). The Court of Appeals judges denied Mr. Bolliger motion to modify the commissioner's ruling, and he now seeks discretionary review in this court. RAP 13.5.

Preliminarily, I note that Mr. Bolliger, citing Form 20 of the Rules of Appellate Procedures, attempts to incorporate by reference his briefing filed below. But Form 20 allows incorporation by reference of briefing only for purposes of a motion to modify, not a motion for discretionary review. See RAP 17.7. Supporting argument in a motion for discretionary review or petition for review by way of incorporated briefing is disallowed. See State v. Brett, 126 Wn.2d 136, 205, 892 P.2d 29 (1995); State v. Kalakosky, 121 Wn.2d 525, 540 n. 18, 852 P.2d 1064 (1993). Accordingly, I will consider only those arguments in the motion for discretionary review.

Mr. Bolliger contends that the district court had personal jurisdiction under the long-arm statute. RCW 4.28.185. That statute provides in relevant part that a person from another state submits to the jurisdiction of Washington courts when she is a party in any cause of action arising from a business transaction within this state. RCW 4.28.185(1)(a). The statute applies when (1) the out-of-state defendant purposely consummates a transaction in Washington, (2) the cause of action arises from the transaction, and (3) Washington jurisdiction does not offend traditional notions of fair play and substantial justice in light of the circumstances, including the equities of the situation. Toulouse v. Swanson, 73 Wn.2d 331, 333, 438 P.2d 578 (1968).

Mr. Bolliger relies on Toulouse, but that decision is readily distinguishable. There, the out-of-state

defendant hired the plaintiff attorney to represent him in an estate matter, thus establishing an attorney-client relationship. Moreover, the client visited Washington on many occasions, and frequently visited his attorney's office as a client. Here, Mr. Bolliger had no attorney-client relationship with Ms. Kane, and there is no evidence that she ever visited Washington.

Mr. Bolliger is correct that Division Two of the Court of Appeals found the long-arm statute to apply where a transaction for the sale of Christmas trees was completed entirely by way of written correspondence, forms, and telephone calls. See Kysar v. Lambert, 76 Wn.App. 470, 789-90, 887 P.2d 431 (1995). But Kysar involved significant and repeated dealings between experienced business people. Here, the record indicates, at best, a rushed

exchange of faxes, accompanied by a disputed number of telephone calls, apparently intended to set up Ms. Kane to act as a guarantor of her (apparently indigent) brother's $20,000 flat fee owed to Mr. Bolliger. Ms. Kane plausibly claims she was unaware of the legal ramifications of the transaction.

Moreover, Court of Appeals Commissioner McCown correctly concluded that the mere execution of a contract is not enough to satisfy the purposeful act requirement. See Bartusch v. Oregon State Bd. of Higher Educ., 131 Wn.App. 298, 306-07, 126 P.3d 840 (2006). The out-of-state defendant must avail herself of the benefits and protections of this state's laws, and she must derive a benefit. See id. at 307. In this connection, Ms. Kane received neither legal services from Mr. Bolliger nor any measurable benefit from the services he provided her brother.

Moreover, Mr. Bolliger does not dispute Ms. Kane's claim that he did not urge her to seek independent legal advice before encumbering her home and signing a promissory note in his favor. And there is no evidence that Mr. Bolliger discussed with Ms. Kane whether her brother would be eligible for an attorney at public expense if he had not money to pay him. Under the circumstances, it is debatable whether Ms. Kane conducted any business in this state, let alone purposefully avail herself of the benefits and protections of this state.

Mr. Bolliger also challenges the commissioner's award of attorney fees under RCW 4.28.185. Such fees are plainly allowed, and they are amply justified under these facts. RCW 4.28.185(5). Ms. Kane is also awarded her attorney fees incurred in this court, in an amount to be determined by the Benton County

District Court.

In sum, Mr. Bolliger fails to show that the Court of Appeals by denying discretionary review, committed obvious or probable error under these facts, or that it so far departed from the usual and customary course of judicial proceedings as to call for this court's review.

The motion for discretionary review is denied, and Ms. Kane's request for attorney fees is granted.

Steven M. Goff /s/

COMMISSIONER

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

No. 28074-8-III

ORDER DENYING MOTION TO MODIFY COMMISSIONER'S RULING

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

Having considered the petitioner's motion to modify the commissioner's ruling of October 16, 2009, the answer thereto, and the record and file herein;

IT IS ORDERED the motion to modify the commissioner's ruling is denied.

DATED: May, 4, 2010.

BY A MAJORITY:

Teresa C. Kulik /s/

CHIEF JUDGE

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

No. 28074-8-III

COMMISSIONER'S RULING

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

Having considered Mr. Bolliger's motion for discretionary review of a Benton County Superior Court decision reversing and remanding the matter to the district court for dismissal due to lack of personal jurisdiction, the response thereto, the record, file, and oral argument of counsel, and being of the opinion that Mr. Bolliger has failed to

establish any of the criteria in RAP 2.3(d) for acceptance of discretionary review in light of Bartusch v. Board of Higher Education, 131 Wn.App. 298, 306-07, 126 P.3d 840 (2006) and Raymond v. Robinson, 104 Wn.App. 627, 638, 15 P.3d 697 (2001), (one of the three factors the courts examine when evaluating whether long-arm jurisdiction exists is whether the party purposefully committed some act or consummated some transaction in the state and the mere execution of a contract with a state resident is not enough to fulfill the purposeful act requirement for long arm jurisdiction); now, therefore,

IT IS ORDERED the motion for discretionary review is denied. Ms. Kane is awarded her attorney fees incurred in this Court pursuant to RCW 4.28.185(5), the amount to be determined by the

Benton County District Court.

October 16, 2009.

Joyce J. McCown /s/

COMMISSIONER

SUPERIOR COURT OF WASHINGTON

BENTON COUNTY

No. 08-2-02231-2

ORDER OF REMAND

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

This matter having come before the Court on a timely appeal from the Benton County District Court's Findings, Conclusions and Order Denying Defendant's Motion for Reconsideration of July 22, 2008, having been heard by visiting Judge Donald W. Schacht, and the Court having reviewed the record, the transcripts of the lower court hearing and

the briefs of counsel,

NOW, THEREFORE, THE COURT HEREBY FINDS that there is no personal jurisdiction over the Appellant, as she is a California resident and has in all matters involving this case never appeared in Washington State, and the exchanges between her and the plaintiff do not constitute a business transaction under RCW 4.28.185(1)(a).

WHEREBY IT IS ORDERED, ADJUDGED AND DECREED that the decision of the District Court denying Appellant's Motion to Dismiss for lack of personal jurisdiction is reversed, and the matter is remanded back to the lower court for an Order of Dismissal.

DATED this 6th day of April, 2009.

Donald W. Schacht /s/

Judge of the Superior Court

DISTRICT COURT OF WASHINGTON

BENTON COUNTY

No. 114713

FINDINGS, CONCLUSIONS, AND ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

On 5/13/08, this case came on regularly on defendant's ("KANE'S") motion for reconsideration (of the Court's prior order dismissing the defendant's motions to dismiss on grounds of (1) lack of subject matter jurisdiction and (2) lack of personal

jurisdiction). The Court has read the briefing of KANE and the plaintiff ("BOLLIGER"), reviewed the legal authorities the parties have brought to the attention of the Court, and heard the argument of counsel relating to KANE'S motion. Based upon the same, the Court enters the following.

FINDINGS & CONCLUSIONS

1. The Kysar v. Lambert, 76 Wn.App. 470, 887 P.2d 431 (1995) decision holds that there exists sufficient, purposeful minimum contacts with the state of Washington where the nonresident defendant exchanged forms, letters, and phone calls with the Washington State plaintiff – and that it doesn't matter which party initiated the communications.

2. The Toulouse v. Swanson, 73 Wn.2d 331, 438 P.2d 578 (1968) decision holds that – within the

meaning of the Washington State long-arm statute, RCW 4.28.185(1)(a) – the nonresident defendant has engaged in the "transaction of . . . business" within the state of Washington when she hires the plaintiff Washington attorney to perform legal services and the instant case is an action by the plaintiff attorney for compensation for the professional (legal) services he rendered as a result of that hiring.

3. In this case, the facts applicable to KANE'S motion for reconsideration are as follows. KANE contacted BOLLIGER by phone to secure legal representation by BOLLIGER for KANE'S brother, Jay Kane. BOLLIGER informed KANE that Jay Kane's felony defense would cost a flat fee of $20,000.00, plus costs incurred, plus $2,000.00 per day for trial in the event Jay Kane elected to go to trial. KANE represented that (1) she will, indeed,

pay all of those fees and costs on behalf of her brother, Jay Kane, (2) she owns her own home, (3) she is employed, and (4) Jay Kane has approximately $30,000.00 in "tribal" money coming to him soon. KANE elaborated that she would try to get a loan on her home while she is waiting for Jay Kane's "tribal" money. If the loan came in first, she would pay BOLLIGER with that money, and use Jay Kane's "tribal" money to pay off the loan. On the other hand, if Jay Kane's "tribal" money came in first, she would use that money to pay BOLLIGER. On 6/26/07, BOLLIGER faxed a Promissory Note to KANE. That same day, KANE executed the Promissory Note and faxed it back to BOLLIGER. Thereafter, KANE mailed the original of the Promissory Note to BOLLIGER. BOLLIGER had also informed KANE that BOLLIGER would need a

deed of trust against KANE'S house, securing KANE'S payment obligation set forth in the Promissory Note. KANE got a form of her own, filled it out on 6/26/07, faxed it to BOLLIGER that same day, and thereafter mailed BOLLIGER the original. On 6/27/07, after receiving from KANE via fax the two documents just referred to, BOLLIGER met again with Jay Kane and they signed the attorneys' fee agreement for Jay Kane's legal defense. On 6/29/07, KANE faxed another form to BOLLIGER, titled *Land Status and Jurisdiction Form, Section 184 Indian Housing Loan Guarantee Program, HUD, Office of Native American Programs.* KANE represented to BOLLIGER on another telephone call that this form was indicative of the loan she was seeking on her home in order to pay Jay Kane's legal defense fees and costs. In a subsequent

telephone call, KANE told BOLLIGER she needed BOLLIGER to draft a power of attorney document for Jay Kane to sign – naming KANE as his attorney-in-fact – so that, when Jay Kane's "tribal" money came in, she could withdraw the funds on Jay Kane's behalf and pay BOLLIGER. On 7/10/07, BOLLIGER therefore drafted a *General Durable Power of Attorney for Financial Decision Making of Jay Kane*, took the document to the jail to discuss it with Jay Kane, and obtained Jay Kane's signature thereon after Jay Kane indicated he was agreeable with that approach. BOLLIGER then mailed the original of the document to KANE. In a subsequent telephone call, KANE requested documentation indicating what Jay Kane's options were if he pleaded guilty versus got convicted after a trial. BOLLIGER faxed such materials to KANE on

9/22/07. BOLLIGER estimates that he and KANE spoke on the telephone perhaps 20 times in all – and that he, BOLLIGER, initiated approximately 60% (12) of the calls and KANE initiated the other 40% (8); this estimate has not been disputed by KANE. At all relevant times Kane resided in California, and made no trips to Washington State.

4. Pursuant to the Washington State long-arm statute, RCW 4.28.185(1)(a), the Court has personal jurisdiction over KANE with respect to BOLLIGER'S instant lawsuit to recover from KANE the legal fees and costs BOLLIGER seeks in connection with the legal services KANE hired BOLLIGER to perform for KANE'S brother, Jay Kane.

Based upon the foregoing, the Court enters the following order.

ORDER

It is hereby ORDERED, ADJUDGED, and DECREED that the defendant's motion for reconsideration (of the Court's prior order dismissing the defendant's motions to dismiss on grounds of (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction) is DENIED.

DATED this 22nd day of July, 2008.

Eugene F. Pratt /s/

Judge of the District Court

DISTRICT COURT OF WASHINGTON

BENTON COUNTY

No. 114713

ORDER DENYING DEFENDANT'S MOTIONS TO DISMISS

JOHN C. BOLLIGER,
Petitioner,

v.

JERIANN KANE,
Respondent.

On 4/1/08 and again on 4/8/08, hearings were held in connection with the defendant's motions to dismiss this lawsuit on grounds of (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction. The Court has read the pleadings on file in this case, read the briefing filed in connection

with the motions, and heard the argument of counsel. Based upon the foregoing, the Court enters the following order.

ORDER

It is hereby ORDERED, ADJUDGED, and DECREED that the defendant's motions to dismiss on grounds of (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction are DENIED.

DATED this 9th day of April, 2008.

Eugene F. Pratt /s/

Judge of the District Court

Excerpt From The Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 766-68, 783 P.2d 78 (1989) Decision (With Emphasis Added)

It is well established in Washington "that under the long-arm statute, RCW 4.28.185, our courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by the due process clause of the United States Constitution, except as limited by the terms of the statute." Deutsch v. West Coast Mach. Co., 80 Wn.2d 707, 711, 497 P.2d 1311, cert. denied, 409 U.S. 1009, 93 S.Ct. 443, 34 L.Ed.2d 302 (1972). We are thus asked to determine what limits are provided by the statute.

Our long-arm statute is patterned after the Illinois statute. Tyee Constr. Co. v. Dulien Steel Prods., Inc., 62 Wash.2d 106, 109, 381 P.2d 245 (1963). The

Illinois statute "reflects on the part of the legislature 'a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due-process clause.'" Tyee Constr. Co. v. Dulien Steel Prods., Inc., 62 Wash.2d 106, 109, 381 P.2d 245 (1963) (quoting Nelson v. Miller, 11 Ill.2d 378, 389, 143 N.E.2d 673 (1957)). See also E. Cleary & A. Seder, Extended Jurisdictional Bases for the Illinois Courts, 50 Nw.U.L.Rev. 599 (1956). The same has been said of RCW 4.28.185. See, e.g., Note, In Personam Jurisdiction Expanded-Force and Effect of Service of Process Outside of State, 34 Wash.L.Rev. 323, 326, 329 (1959). We interpret the statute relying upon this conceptual foundation.

In order to subject nonresident defendants and foreign corporations to the *in personam* jurisdiction

of this state under RCW 4.28.185(1)(a), the following factors must coincide:

> (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
>
> (2) the cause of action must arise from, or be connected with, such act or transaction; and
>
> (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

Deutsch v. West Coast Mach. Co., 80 Wash.2d 707, 711, 497 P.2d 1311 (citing Oliver v. American Motors Corp., 70 Wash.2d 875, 425 P.2d 647 (1967) and Tyee Constr. Co. v. Dulien Steel Prods., Inc., 62 Wash.2d

106, 381 P.2d 245 (1963)), cert. denied, 409 U.S. 1009, 93 S.Ct. 443, 34 L.Ed.2d 302 (1972). In Werner v. Werner, 84 Wash.2d 360, 365, 526 P.2d 370 (1974), the court noted that:

> These factors are, in part, a distillation of the due process standards announced in International Shoe Co. v. Washington, [326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, 161 A.L.R. 1057 (1945)], and refined in Hanson v. Denckla, [357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)]; Travelers Health Ass'n v. Virginia, 339 U.S. 643, 70 S.Ct. 927, 94 L.Ed. 1154, (1950); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952); McGee v. International Life Ins. Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957).

Thus, when the federal courts regard the due process standard and the statutory standard under RCW 4.28.185 as a single inquiry,FN2 it is based upon a concept firmly rooted in our case law.

FN2. E.g., Pedersen Fisheries, Inc. v. Patti Indus. Inc., 563 F.Supp. 72, 74 (W.D.Wash. 1983); Shute v. Carnival Cruise Lines, 863 F.2d 1437, 1440 n. 1 (9th Cir.1988), withdrawn, 872 F.2d 930 (1989).

Excerpt From The Kysar v. Lambert, 76 Wn.App. 470, 487-88, 887 P.2d 431 (1995), rev. den. by 126 Wn.2d 1019, 894 P.2d 564) (1995) Decision (With Emphases Added)

A second, independently sufficient basis for personal jurisdiction is the long-arm statute, RCW 4.28.185. Moreover, this is true regardless of whether the Kysars first contacted Lambert, as he asserts, or he first contacted them, as they assert.

RCW 4.28.185 states in part:

> (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:
>
> (a) The transaction of any business within this

state[.]

RCW 4.28.185 "extends jurisdiction to the limit of federal due process." Shute v. Carnival Cruise Lines, 113 Wn.2d 763, 771, 783 P.2d 78 (1989); Chan, 39 F.3d at 1405; MBM Fisheries, Inc. v. Bollinger Mach. Shop and Shipyard, Inc., 60 Wn.App. 414, 423, 804 P.3d 627 (1991). Federal due process permits the exercise of jurisdiction when there have been purposeful minimum contacts between the defendant and the forum state, the plaintiff's cause of action arises out of or relates to those contacts, and the exercise of jurisdiction is reasonable, i.e., consistent with notions of fair play and substantial justice. Grange Ins. Ass'n v. State, 110 Wn.2d 752, 758, 757 P.2d 933 (1988), cert. denied, 490 U.S. 1004, 109 S.Ct. 1638, 104 L.Ed.2d

154 (1989), citing Burger King, 471 U.S. at 472-78, 105 S.Ct. at 2182-85, and Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d (1987); see also Tyee Constr. Co. v. Dullen Steel Prods., Inc., 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963). **Thus, RCW 4.28.185 authorizes the exercise of jurisdiction under these same conditions.**

. . . .

In light of these authorities, this case involves minimum contacts sufficient to support long-arm jurisdiction. . . . [T]he Kysars and Lambert engaged in several transactions that involved Washington as well as Massachusetts. **The particular transaction at issue here involved an exchange of forms, letters and phone calls between Washington and Massachusetts.** It concluded with Lambert

knowingly and purposefully ordering Christmas trees from Washington. . . . . In sum, Lambert engaged in knowing and purposeful minimum contacts with this state, the Kysar's cause of action arose out of those contacts, and it is reasonable for this state to exercise jurisdiction.

Excerpt From Page 11 Of BOLLIGER'S Motion For Discretionary Review Filed With The Washington Court Of Appeals

Moreover, given facts similar to those of this case, if the law of this state is going to be as [Superior Court] Judge Schacht views it – namely, that persons residing in Washington State cannot expect to be able to have a Washington State court enforce a contract entered into with a person residing in another state unless that other person personally appeared in the state of Washington for the purpose of contract negotiations or otherwise in connection with the subject matter of the contract – it . . . . . would be offensive to . . . . . the U.S. Constitution's Due Process Clause applicable to the states (Amend. XIV, Sec. 1) . . . .